

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-162-W/S - ORDER NO. 2000-662

AUGUST 15, 2000

IN RE: Application of Chickasaw Association, Inc.) ORDER *WJ*
for Approval to Purchase a Portion of Assets) APPROVING
of Hartwell Utilities, Inc.) TRANSFER

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Chickasaw Association, Inc. (Chickasaw or the Association) for approval of the purchase of a portion of the assets of Hartwell Utilities, Inc. (Hartwell or the Utility).

Pursuant to the instructions of the Executive Director, the Association published a notice in a newspaper of general circulation, one time, and provided notice to each individual customer of the system in an effort to allow the public to take part in the proceeding. A Petition to Intervene was received from the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Further, a night hearing in the service area was held at the Oconee County Courthouse on July 13, 2000 to allow members of the public to express their opinion on the proposal. Those present appeared to overwhelmingly favor the proposal, although there was some opposition.

The Commission held an evidentiary hearing at the offices of the Commission on August 3, 2000 at 10:30 AM. The Honorable William T. Saunders, Chairman, presided. The Association was represented by Frank R. Ellerbe, III, Esquire. The Association presented the testimony of

James Cononie, President of the Utility Council for the Association. The Consumer Advocate was represented by Charles Knight, Esquire. The Consumer Advocate presented no witnesses. The Commission Staff (the Staff) was represented by Jocelyn D. Green, Esq. The Staff presented the testimony of Charles Creech, Chief of the Commission's Water and Wastewater Department.

James Cononie noted that the Association had previously filed a complaint against the owner of the utility, which was stayed (and subsequently withdrawn) after that owner filed Bankruptcy proceedings in a Louisiana Bankruptcy Court. After the Association evaluated its options, it began negotiations with the Bankruptcy Trustee for the water and sewer systems serving the Association's Chickasaw Point subdivision. The negotiations proved to be successful and in February of this year, the trustee filed a motion asking the Bankruptcy Court to approve the sale of assets to the Association. The Bankruptcy Judge subsequently issued an Order authorizing the Trustee to sell the system assets to the Association.

Cononie is President of the Utility Council (the Council) of the Association. According to Cononie, the Council had numerous discussions with state regulatory personnel and hired the engineering firm Goldie and Associates to examine the system and prepare a report on its condition. The Goldie studies outlined operation and maintenance deficiencies. At present, the systems do not conform with South Carolina Department of Health and Environmental Control (DHEC) regulations in several particulars. The Council has had discussions with DHEC regarding these deficiencies. A schedule has been worked out for correction of the problems, and qualified contractors will be hired. These contractors will be also be responsible for running the system on a day-to-day basis, along with certain licensed operators and clerical personnel.

Cononie pledged that the Association would adopt the currently approved rates, terms, and conditions of the Hartwell Utilities tariff. Cononie also stated that the public interest would

be served by Commission approval of the proposed transfer. He stated that the water and sewer systems have been deficient, but that the Association has the capability to improve the systems, and provide proper oversight. No other entity has expressed an interest in obtaining the systems.

Charles Creech, Chief of Water and Wastewater for the Utilities Department, also testified. Creech delivered a history of the system, and stated the approved rates. The present rates have been in effect since March 9, 1992. Creech noted that he made an on-site inspection of the 18 pump stations in the wastewater system in March, 1999. The majority of the pump stations had only one operating pump, while DHEC requires two pumps in each lift station. At the time of his visit, Creech noted visible signs of overflows at some of the pump stations and the conditions of the buildings were poor. Some odor was being emitted from some of the stations and the electrical controls were not as secure as they should have been at the time. The sewerage treatment plant consists of three package plants and a holding pond. The effluent is used for irrigating the golf course.

Creech testified that the water system consists of approximately 375 metered services. Water is purchased from Pioneer Rural Water District through a master meter and stored in a 100,000 gallon elevated storage tank. According to Creech, the greatest problem with the water system is leaks in the service lines. The leaks are generally caused by high pressure in the hilly terrain.

Three recommendations were presented by Creech on behalf of the Staff. First, Staff recommends approval of the sale of the assets of Hartwell Utilities, Inc. to Chickasaw Association, Inc. No other public or private utility is willing to take over the ownership and operation of the systems, and Creech states a belief that the Association has no other alternative but to acquire the assets. Also, the Association can control its own destiny through the

acquisition, and it will take necessary steps to make the utility viable, since its residents are the end users of the system. Second, Creech recommends that the utility's books and records be kept separately from any other businesses of the Association. Third, Creech recommends that the Association file a performance bond, as long as it is under the jurisdiction of the Commission.

The applicable law in this case is found at 26 S.C. Code Ann. Regs. 103-504 (1976) and 103-704 (1976). Both of these regulations, found in the Commission's wastewater and water provisions, respectively, require that we, upon approval of the sale, award a certificate, certifying that the sale in question is in the public interest, after proper notice and a hearing. In this particular case, there can be no doubt that the certificate should be granted, and that the sale in question declared to be in the public interest.

Clearly, both the water and the wastewater systems have major problems, and are out of compliance with DHEC regulations. The Association, being the end user group, has every reason to bring both systems up to standard, and to run the systems in compliance with all applicable laws and regulations. It is obvious to this Commission that these systems need much work, and that the Utility Council of the Association is willing to make sure that the work is done properly, and that the appropriate people are hired to run the system on a day-to-day basis. As Staff witness Creech stated, no other public or private company is willing to take over the systems, so it appears that there may really be no alternative but to approve the sale at this juncture. In any event, the Association can certainly control its own destiny through the acquisition, and take all necessary steps to make both the water and the wastewater systems viable. We note that the attendees at the night hearing appeared to be overwhelmingly in favor of the acquisition, despite some small opposition. We would state that we agree with Creech's other recommendations in this case as well. The Association should keep separate books on the utility, and should keep

them according to the NARUC System of Accounts. Further, a performance bond should be posted, as per the applicable statute.

We applaud the Association's efforts in this matter, and trust that it will bring the utility systems back into compliance with applicable law as quickly as possible.

IT IS THEREFORE ORDERED THAT:

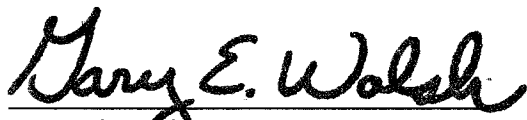
1. The Application for approval of the sale of certain assets of Hartwell Utilities, Inc. to the Chickasaw Association, Inc. is approved.
2. The requisite Certificate is granted and the sale declared to be in the public interest.
3. The Association shall keep separate books on the utility, conforming to the NARUC System of Accounts.
4. The Association shall post a performance bond with this Commission that is consistent with applicable law as long as the utility is under the Commission's jurisdiction. The Association shall comply with all Commission statutes, regulations, and reporting requirements.
5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)